

The Administrative Law Judge found claimant failed to meet her burden of proving a permanent injury as a result of her work activities. Claimant appeals, contending the award should be for a permanent partial disability for a work-related injury to her back. In the alternative, claimant alleges that she would at least be entitled to medical and temporary total disability compensation for a temporary aggravation of her pre-existing back condition. Accordingly, the issues for determination by the Appeals Board are:

- (1) Whether the alleged accident arose out of and in the course of claimant's employment with respondent;
- (2) The nature and extent of claimant's resulting disability, if any.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds:

The Award of the Administrative Law Judge sets out her findings of fact and conclusions of law in some detail. It is not necessary to repeat those findings and conclusions. Having reviewed the entire record, the Appeals Board finds that the findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate and hereby adopts same as its own findings as if specifically set forth herein. Specifically, the Appeals Board agrees that claimant has not met her burden of proof that she sustained injury by accident arising out of and in the course of her employment with respondent. That conclusion having been reached, the Appeals Board need not address the remaining issue concerning the nature and extent of claimant's disability.

The evidence in this case is overwhelming to the effect that claimant injured her back falling down stairs at home and not as a result of her activities at work. This is not only the description of the accident given by claimant to her co-workers, but is also contained in the office records of the initial treating physician, Dr. R.M. Varner. Dr. Varner's subsequent recollection of claimant's having described a work-related injury, after having been reminded of same by the claimant, is not reflected in his records and Dr. Varner could not recall at what point claimant may have given him that history. The Appeals Board finds the contemporaneous entries by Dr. Varner in his office records to be the more reliable evidence of causation. The testimony of subsequent treating and examining physicians do not dispel the history of causation being the fall at home, nor do they persuade this trier of fact of a subsequent work-related aggravation which would rise to the level of constituting a new accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl, dated May 10, 1995 should be, and is hereby, affirmed in all respects and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of August 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Terry J. Torline, Wichita KS
Kendall R. Cunningham, Wichita KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director